**U.S. Department of Labor**

Office of Administrative Law Judges
Heritage Plaza Bldg. - Suite 530
111 Veterans Memorial Blvd
Metairie, LA 70005

(504) 589-6201
(504) 589-6268 (FAX)

**Issue Date: 15 May 2003**

**CASE NO.: 2000-LHC-2648**

**OWCP NO.: 07-155359**

**IN THE MATTER OF**

**JOHN ROUSE,**
**Claimant**

**v.**

**FRIEDE GOLDMAN OFFSHORE**
**f/k/a/ HAM MARINE, INC.,**
**Employer**

**and**

**INSURANCE CO. OF THE STATE OF PENNSYLVANIA,**
**EAGLE PACIFIC INSURANCE COMPANY,**
**MISSISSIPPI INSURANCE GUARANTY ASSOC.,**
**Carriers**

**APPEARANCES:**

**DAVID C. FRAZIER, ESQ.**
**On behalf of the Claimant**

**FOSTER P. NASH, III, ESQ.**
**On behalf of the Employer and**
**the Insurance Company of the**
**State of Pennsylvania**

**MICHAEL J. McELHANEY, ESQ.**
**On behalf of the Employer and**
**Eagle Pacific Insurance**

**DONALD MOORE, ESQ.**
**On behalf of Reliance Insurance Company (in liquidation) and the Mississippi Insurance Guaranty Association**

**Before: LARRY W. PRICE**
**Administrative Law Judge**

# DECISION AND ORDER AWARDING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (hereinafter "LHWCA"), 33 U.S.C. § 901, et seq., brought by John Rouse (Claimant) against Friede Goldman Offshore (Employer) and Insurance Company of the State of Pennsylvania, Eagle Pacific Insurance Company and Reliance Insurance Company, by and through the Mississippi Insurance Guaranty Association (MIGA) (Carriers).

The issues raised by the parties could not be resolved administratively and the matter was referred to the Office of Administrative Law Judges for hearing. A formal hearing was held in Biloxi, Mississippi, on March 10, 2003. All parties were afforded a full opportunity to adduce testimony, offer documentary evidence and submit post-hearing briefs.[1] The following exhibits were received into evidence:

1. Joint Exhibit 1,
2. Claimant's Exhibits 1-14,
3. Insurance Company of the State of Pennsylvania's Exhibits (ICSP) 1-29 and
4. Eagle Pacific Insurance Company's Exhibits (RX.) 1-30.

Based upon the stipulations of the parties, the evidence introduced, and the arguments presented, I find as follows:

## I. STIPULATIONS

During the course of the hearing the parties stipulated and I find as related to Case No. 2000–LHC-02648 (JE-1):

[1] On May 5, 2003, Carrier Reliance, by and through MIGA, submitted a Motion to Strike the post-trial brief of Carrier ICSP for failure to comply with the Court's Order that briefs were to be limited to two pages. I hereby grant Reliance/MIGA's motion to strike. Accordingly, all but the first two pages of ICSP's post-hearing brief are stricken from the record in this case.

1. Jurisdiction is not a contested issue. John Rouse was employed with Friede Goldman, f/k/a Ham Marine, Inc.

2. Date Notice of Controversion filed: March 3, 2000.

3. Date of informal conference: None.

4. Average weekly wage at time of injury: $600 for 1998, when ICSP was on the risk; compensation rate of $400 for period in 1999 when Eagle Pacific was on the risk; average weekly wage of $378.06 for period in 1999 when Reliance/MIGA was on the risk.

5. Nature and extent of disability:

   (a) Temporary total disability: 12/28/98-1/18/99; 3/3/99-3/15/99; 8/19/99-9/9/99; 12/8/99-2/8/01.

   (b) Benefits paid: None.

   (c) Medical benefits paid: None.

6. Claimant is permanently partially disabled with a ten percent impairment rating.

7. Date of maximum medical improvement: February 1, 2001.

## II. ISSUES

The unresolved issues in this proceeding are:

1. Responsible carrier.

2. Medical expenses.

## III. STATEMENT OF THE CASE

**Claimant's Hearing and Deposition Testimony**

Claimant is a thirty-four year old man who resides in Lucedale, Mississippi. (CX. 2, pp. 7, 13). He is a high school graduate who completed a two-and-a-half year course of

study in welding techniques and metallurgy at Gulf Coast Junior College. (CX. 2, p. 15). Claimant also studied welding in an apprenticeship program with Ingalls Shipbuilding. (CX. 2, pp. 15-16). While working for Employer, Claimant was a structural welder who also did some fitting work. (Tr. 22). He worked off and on for Employer during the years before, during and after the injury in question. (Tr. 22-23).

Claimant testified that the injury in question occurred on February 28, 1998. Claimant was working for Employer on a dry-docked rig. (CX. 2, p. 60). He was walking on some scaffolding when he slipped and grabbed something to pull himself up, dislocating his left shoulder. (CX. 2, pp. 60-61, 64). A co-worker picked Claimant up and helped him to sit down. (CX. 2, p. 65). Claimant testified that his pain at that time was "unbearable." (CX. 2, p. 67). After several minutes, Claimant's shoulder went back into place. (CX. 2, pp. 66, 67). He then reported the accident to his foreman and went to the safety office. (CX. 2, pp. 68-69). According to Claimant, everyone knew about his accident when it happened, including two superintendents and his immediate supervisor. (CX. 2, pp. 69-70).

Although the two superintendents told Claimant that he did not need medical attention and should be able to return to work the next day, Claimant did seek medical treatment on his own after the accident. (CX. 2, p. 71). Claimant's family doctor told him not to return to work until a specialist had examined his shoulder. The doctor referred Claimant to Dr. John Cope, who Claimant first saw several days later. (CX. 2, pp. 72-73). Dr. Cope gave Claimant a full shoulder restraint and recommended that Claimant should not return to work for at least six weeks. When Claimant told Dr. Cope that he had to work, Dr. Cope instructed Claimant to do only light-duty work and not to use his left arm. (CX. 2, p. 74). Claimant did not return to work until after he saw Dr. Cope. (CX. 2, pp. 73-74). Claimant continued to work for Employer for at least a month after the accident, doing one-handed welding. (CX. 2, p. 74). He testified that he was limited in his ability to do his normal job duties. (CX. 2, p. 75).

After his initial visit with Dr. Cope, Claimant began experiencing recurring dislocations of his shoulder. (CX. 2, pp. 75-76). According to Claimant, the dislocations became more and more frequent over time, often occurring on a daily basis while he was doing basic activities. (CX. 2, pp. 76, 80-81; Tr. 20, 29, 39). Claimant testified that his family members and his foreman and co-workers witnessed these occurrences. (CX. 2, pp. 76-77). According to Claimant, the other people who worked for Employer were fully aware of his accident and his subsequent physical condition. (Tr. 29-30).

After Claimant stopped working for Employer in 1998, he began working for American Tank and Vessel as an X-ray welder. (CX. 2, pp. 78-79, 94; Tr. 23). He worked for American Tank for about seven or eight months before quitting because he did not want to travel so much for work. (CX. 2, p. 79; Tr. 26). Claimant did not recall whether he

injured his shoulder on the job while working for American Tank but testified that he might have done so at home during this period of time. (CX. 2, pp. 79, 94-95; Tr. 25). Claimant explained that while working for American Tank, his shoulder dislocated one day after work. (Tr. 25).

Claimant eventually went back to work for Employer on September 9, 1999. (CX. 2, p. 79; Tr. 23). After another dislocation incident, which occurred when Claimant grabbed onto some scaffolding to pull himself up, Claimant's superintendent moved him from working on the rig to welding at a table in the shop. (CX. 2, pp. 77-78; Tr. 23-24). His last day of work was November 19 or 24, 1999. (CX. 2, p. 95; Tr. 27, 33-34). Claimant stopped working on the advice of his doctor, who told him that total reconstructive surgery was necessary. (CX. 2, p. 96; Tr. 24). According to Claimant, his shoulder dislocated seven times in nine days after he stopped working. (CX. 2, pp. 96, 97; Tr. 24).

Claimant testified that he had never experienced any shoulder problems until the day of the February 1998 accident. (CX. 2, p. 66; Tr. 38-39). Since January 1, 1998, he has not had any other accidents other than the accident in question here, but he has had many instances of shoulder problems since that time. (Tr. 18, 39). Claimant affirmed that there were two incidents in which his shoulder dislocated in March 1998, one involving an altercation with another man and another in which he tripped and fell over a toy, landing on his left shoulder. (Tr. 19). Claimant estimated that his shoulder dislocated "close to probably two hundred times" between the first dislocation and the surgery in 2000. (Tr. 19-20, 28). He affirmed that on one occasion, his shoulder dislocated when he was driving a three-wheeler and went over a bump. (Tr. 22).

Claimant underwent shoulder surgery on August 8, 2000. (CX. 2, pp. 83-84). Although his shoulder has not dislocated since the surgery, Claimant will never have full use of it again. He testified that he still feels pain and discomfort. (CX. 2, p. 84). Claimant's surgeon, Dr. Arthur Black, determined that Claimant had reached maximum medical improvement on February 1, 2001. (JE-1).

Claimant testified that he attempted to file a claim on his medical health insurance after the accident, but the claim was rejected because his injury was work-related. (Tr. 35). Claimant got his surgery done because his stepfather paid Dr. Black half of the surgical fee up front, which was about $1,500 to $1,800. (Tr. 36).

Since Claimant stopped working for Employer in late 1999, he has earned some money doing odd jobs but has had no other source of income. (CX. 2, pp. 45-46, 57). Claimant can drive a car, and he does activities such as hunting and yard work. (CX. 2, pp. 87-90).

**Deposition of Seth Blalock**

Mr. Blalock works for Employer as a structural fitter. (RX. 16, pp. 4-5). In February 1998, he worked as either a structural fitter or a foreman. Mr. Blalock testified that he knew that Claimant had an accident on February 24, 1998, but he did not witness the accident and did not know whether it occurred at work. Mr. Blalock learned of the accident from Claimant, who was wearing a sling after hurting his shoulder. (RX. 16, p. 5). According to Mr. Blalock, Claimant said he had slipped and hurt himself at work. (RX. 16, pp. 7-8).

According to Mr. Blalock, Claimant was not a good worker before his accident. Mr. Blalock stated that Claimant had attendance problems and did not work very hard when he did report to work. (RX. 16, p. 9). Mr. Blalock testified that Claimant called him before his deposition and offered him part of the settlement money to testify on Claimant's behalf. Mr. Blalock told Claimant that he did not want to get involved in Claimant's case because he was still working for Employer. (RX. 16, pp. 9-10).

**Deposition of David Cochran**

Mr. Cochran works for Employer as the department manager over structural welders. In February 1998, he was a structural welding superintendent. (RX. 17, p. 4). He did not recall working around Claimant on the day of the accident, but he did remember seeing Claimant at work wearing a sling. Claimant told Mr. Cochran that he had gotten hurt on the job. (RX. 17, p. 5). In the weeks following Claimant's injury, Mr. Cochran observed Claimant wearing a sling, welding with one hand and working on the main deck where he could avoid climbing. (RX. 17, pp. 6-7). Mr. Cochran testified that Claimant worked with his arm in a sling from the time of injury until the time he left Employer. (RX. 17, p. 7).

Mr. Cochran testified that he heard a rumor at work that Claimant had already hurt his arm in a four-wheeler wreck the year before the accident at issue. (RX. 17, pp. 8-11). Mr. Cochran stated that he saw Claimant with his arm in a sling sometime before 1998. (RX. 17, p. 11). Apparently Mr. Cochran saw a record of this 1997 accident before giving his deposition. (RX. 17, pp. 13-14).

**Deposition of Paul Hennis**

Mr. Hennis works as an area manager for Employer. (RX. 18, p. 4). In February 1998, he worked as a superintendent over the structural fitters; he was not Claimant's direct supervisor. (RX. 18, pp. 4, 9). Mr. Hennis did not recall Claimant reporting his accident on February 24, 1998. (RX. 18, p. 6). He first learned of Claimant's injury when Claimant returned to work wearing a sling on one of his arms. (RX. 18, pp. 6-7). Someone told Mr. Hennis that Claimant hurt himself off the job. (RX. 18, p. 8). While Claimant continued to

work after the accident, he was confined to the deck, where he welded with one arm and did not have to climb. (RX. 18, p. 7). Mr. Hennis did not recall how long Claimant continued to work with these restrictions. (RX. 18, p. 9).

Mr. Hennis testified that although Claimant had an attendance problem before his accident, he was a good worker when he did come to work. He did not know the source of Claimant's attendance problem. (RX. 18, p. 5). Mr. Hennis testified that he heard rumors that Claimant had a pre-existing injury at the time of his accident in 1998, but he had no personal knowledge as to whether or not this rumor was true. (RX. 18, pp. 7-8).

**Deposition of John Cope, M.D.**

Dr. Cope is an orthopedic surgeon who began treating Claimant shortly after his workplace accident occurred. (CX. 5, pp. 4-5). Dr. Cope first saw Claimant on March 3, 1998. At that time, Claimant gave a history of his injury, telling Dr. Cope that the injury occurred when he reached above his head and tried to pull himself up with his left arm, at which point he felt a sudden pop and pain in his left shoulder. (CX. 5, p. 5).

Upon physical examination, Dr. Cope noted tenderness in Claimant's shoulder. Claimant also had a positive apprehension test. Dr. Cope's diagnosis was a dislocated shoulder that had spontaneously reduced. He next saw Claimant on March 17, 1998. Claimant had good shoulder motion and mild pain at the limits of motion, as well as a positive impingement test. Dr. Cope recommended that Claimant continue to immobilize his shoulder and follow up in two weeks with an X-ray. (CX. 5, p. 7).

In the interim period between this visit and Claimant's next appointment with Dr. Cope, Claimant saw Dr. Wiggins, another doctor at the same clinic, and reported that he had been assaulted, injuring his shoulder. Dr. Wiggins took X-rays, which looked normal. After the assault, Claimant experienced some shoulder pain while climbing at work, and he also tripped and fell at home, again hurting his shoulder. (CX. 5, p. 8). On his next visit with Dr. Cope, Claimant had significantly less range of motion in his shoulder. All other aspects of the exam remained the same as before. (CX. 5, p. 9). Dr. Cope wanted Claimant to start physical therapy, but Claimant was not interested and said he would do the exercises on his own. (CX. 5, pp. 9-10). Claimant wanted to continue working.

On April 14, 1998, Claimant returned to see Dr. Cope. Claimant reported that he was working about fifty hours a week and doing fairly well, although his shoulder did hurt when he performed certain activities. Claimant's shoulder had not dislocated since the last visit. Claimant essentially had a full range of motion, with some pain. His physical examination results were otherwise unchanged. (CX. 5, p. 10). Dr. Cope recommended an MRI scan, continued therapy and anti-inflammatory medication. (CX. 5, pp. 10-11). According to Dr.

Cope, Claimant had attended physical therapy since his last appointment. Dr. Cope next saw Claimant on April 28, 1998. (CX. 5, p. 11). Claimant had experienced no further dislocations at that time. His MRI indicated a small Hill-Sachs lesion, which can predispose a person to further dislocation. (CX. 5, p. 12). Dr. Cope felt that Claimant showed symptoms of shoulder instability and was trying to do too much too soon. Dr. Cope thought that Claimant would eventually require surgery if his symptoms persisted and he did not work on strengthening his shoulder through physical therapy.

Dr. Cope next saw Claimant on August 31, 1998. (CX. 5, p. 13). Claimant had continued to have symptoms of instability and had recently had a four-wheeler wreck, in which he dislocated his shoulder. (CX. 5, pp. 14-15). The physical examination revealed objective findings consistent with a four-wheeler wreck. (CX. 5, p. 16). Claimant returned on September 6, 1998, for a follow up. He continued to have limited and painful motion of the shoulder, but he wanted to return to work. Dr. Cope attempted to persuade Claimant not to return to work, telling Claimant that he needed to avoid using his shoulder for several weeks and go to physical therapy if he wanted to avoid surgery. Dr. Cope did not know whether Claimant took his advice. (CX. 5, p. 17). Dr. Cope also recommended another X-ray for Claimant.

On September 22, 1998, Claimant returned to see Dr. Cope. (CX. 5, p. 18). His X-ray appeared fairly normal. (CX. 5, p. 19). Claimant had not been back to work since the four-wheeler accident and reported that his pain had subsided somewhat. However, Claimant now planned to return to work, and Dr. Cope again recommended against that. (CX. 5, p. 18). Knowing that Claimant would not take his advice, Dr. Cope told Claimant to at least wear the sling at work and try to limit his activity. Claimant did not want to attend physical therapy and said he would do the exercises on his own. (CX. 5, p. 19). At that point, Dr. Cope was concerned about the likelihood of further dislocations. (CX. 5, pp. 31-35). Dr. Cope thereafter saw Claimant three more times in 1998 for an unrelated problem with his wrist. He did not treat Claimant's shoulder on these visits. (CX. 5, pp. 19-21).

Dr. Cope testified that any of the injuries experienced by Claimant after his initial dislocation could have caused a small fracture off the anterior inferior glenoid rim. (CX. 5, pp. 22-24). Likewise, the Hill-Sachs lesion could have been caused by any incident that dislocated Claimant's shoulder. (CX. 5, pp. 22-23). Without proper X-ray documentation before and after each incident, it would be very difficult to ascertain which dislocation caused the glenoid injury. (CX. 5, pp. 37-38, 43). Dr. Cope affirmed that each time Claimant's shoulder dislocated, it aggravated and exacerbated his underlying condition. (CX. 5, p. 24). When asked to assume that Claimant did not seek medical treatment for eight or nine months after he last saw Dr. Cope in September 1998, Dr. Cope testified that he believed that Claimant probably continued to be symptomatic during that time but chose to live with the symptoms rather than seeking care. (CX. 5, p. 25). Dr. Cope stated that

although he had no X-ray documentation of Claimant's shoulder dislocating during his treatment, he is convinced that Claimant's shoulder dislocated twice during that time, before Claimant's first visit to Dr. Cope and again when Claimant wrecked the four-wheeler in August 1998. (CX. 5, pp. 26-27).

On November 30, 1999, Claimant saw Dr. Wiggins, who worked at the same clinic as Dr. Cope. At that time, Claimant complained of recurrent shoulder dislocations over the past several weeks. (CX. 5, pp. 35-36). The X-rays taken showed an obvious Hill-Sachs lesion and calcification of the glenoid. (CX. 5, pp. 36-37). The Hill-Sachs lesion had increased in size from previous X-rays, increasing the chances of repeat dislocation. (CX. 5, p. 37). Claimant's overall condition had worsened. (CX. 5, pp. 37, 39).

Dr. Cope testified that while some dislocations may cause more damage than others, each dislocation further injures the shoulder and worsens the shoulder condition. (CX. 5, p. 39). He agreed that over time, it becomes progressively easier for the shoulder to dislocate and it gets more difficult to measure the damage caused by any particular incident. (CX. 5, p. 41). According to Dr. Cope, by December 1, 1999, Claimant "had reached an exquisitely unstable situation" with regard to his shoulder. (CX. 5, p. 40). Dr. Cope affirmed that Claimant's original injury "set this whole sequence into motion." (CX. 5, p. 41). He noted that Claimant's original injury did not seem to be traumatic enough by itself to dislocate his shoulder, suggesting that Claimant might have had shoulder problems in the past. (CX. 5, p. 43).

**Deposition of Arthur D. Black, M.D.**

Dr. Black is an orthopedic surgeon who specializes in knee and shoulder surgery. (RX. 26, pp. 5-6). Dr. Black first saw Claimant on December 1, 1999. (RX. 26, p. 21). At that time, Claimant complained of continual shoulder dislocations and pain. (RX. 26, p. 22). He told Dr. Black that his shoulder had dislocated three times in the past ten days. (RX. 26, p. 23). Upon physical examination, Claimant had full range of motion in his shoulder and exhibited a strong apprehension sign, which was objective evidence of instability. (RX. 26, pp. 25-26). Claimant did not have any nerve damage but did have some soreness over his ligaments. (RX. 26, p. 25). Dr. Black took some X-rays, which showed a small fracture off the anterior inferior glenoid rim and a Hill-Sachs lesion. (RX. 26, p. 28). He diagnosed Claimant with recurrent left shoulder dislocation. Dr. Black recommended that Claimant have surgery to reconstruct his shoulder ligaments. According to Dr. Black, Claimant's shoulder would continue to dislocate until he had surgery. (RX. 26, p. 31). In the meantime, Dr. Black prescribed some anti-inflammatory medication. He testified that Claimant would be able to do sedentary work before undergoing surgery, although he did not know whether Claimant was employed at that time. (RX. 26, p. 32).

Dr. Black next saw Claimant on July 20, 2000. Claimant reported recurrent dislocations. His physical examination was unchanged. Dr. Black's diagnosis likewise remained unchanged. (RX. 26, p. 33). Claimant agreed to undergo surgery but then injured his leg, which needed to heal before he could undergo the shoulder procedure. (RX. 26, p. 34). Dr. Black next saw Claimant on August 7, 2000, to check on the progress of his leg wound. (RX. 26, p. 35).

On August 9, 2000, Dr. Black performed surgery on Claimant to reattach and tighten his shoulder ligaments. (RX. 26, pp. 35-37, 58-59). Dr. Black did not treat the Hill-Sachs lesion because it was not necessary to do so in order to stabilize the shoulder. (RX. 26, p. 37). In post-operative follow up appointments, Dr. Black was pleased with Claimant's progress. (RX. 26, pp. 38-40). Dr. Black testified that he accomplished the goal of the surgery, which was to stop Claimant's shoulder from dislocating and give him a normal range of motion. (RX. 26, p. 38). On February 1, 2001, Claimant had lost less than ten percent of his flexibility in the left shoulder and was doing very well. (RX. 26, p. 42). Dr. Black felt that Claimant essentially had reached MMI, so he released Claimant to work without restrictions, cautioning him to be careful with his shoulder. (RX. 26, pp. 41-43).

Dr. Black was not sure how Claimant's initial injury occurred. (RX. 26, p. 7). Dr. Black testified that he did not know enough of Claimant's history to determine whether his condition was consistent with his original injury, but he did note that most people do not dislocate their shoulders from pulling themselves up. Dr. Black agreed that if Claimant was falling and grabbed onto something, that type of injury would be consistent with a dislocated shoulder. (RX. 26, pp. 60-61). He did not recall whether Claimant ever injured his shoulder in an altercation or tripped over a child's toy and fell onto his shoulder. (RX. 26, pp. 9, 14-15). Dr. Black testified that it was possible that these types of incidents could have caused a small fracture off the anterior inferior glenoid rim or a Hill-Sachs lesion. (RX. 26, pp. 11-13, 15). According to Dr. Black, tripping over a toy and falling would aggravate a pre-existing recurrently dislocating shoulder. (RX. 26, p. 47). Dr. Black did not recall whether Claimant was involved in another altercation in August 1998. (RX. 26, p. 16). He testified that while it is possible for a person to dislocate his shoulder in an altercation, it is not a usual occurrence and would depend on what happened in the fight. (RX. 26, pp. 17, 46). Dr. Black did not recall whether Claimant had been in a four-wheeler accident in August 1998, but stated that, depending on what actually happened in the accident, it could be possible that Claimant dislocated his shoulder. (RX. 26, pp. 17-19).

With regard to dislocation, Dr. Black testified that "the first event is the key." Each subsequent dislocation is an aggravation of the underlying condition and can exacerbate the existing problem. (RX. 26, pp. 23, 47, 49-50, 52). Dr. Black explained that recurring dislocations are more of an aggravation than an exacerbation, but they do have an

exacerbating effect on the pre-existing problem. (RX. 26, pp. 49-50, 56). In sum, the overall condition worsens over time with repeated dislocations. (RX. 26, pp. 24, 47-48, 50, 53).

Dr. Black saw Claimant ten times in his office and twice in the hospital. Dr. Black's exams usually take fifteen to twenty minutes. (RX. 26, p. 20). Dr. Black acknowledged that he did not study all of Claimant's previous diagnostic tests. (RX. 26, p. 54). He did not study all of Claimant's previous X-rays to see whether Claimant's underlying condition had worsened since his initial injury. (RX. 26, pp. 55-56).

**Deposition of William A. Crotwell, III, M.D.**

Dr. Crotwell is an orthopedic surgeon who performed an independent medical examination (IME) upon Claimant on March 12, 2001. (CX. 6, pp. 8, 12). He examined Claimant for about thirty to forty minutes and then reviewed Claimant's medical records and X-rays. (CX. 6, p. 22). At that time, Claimant gave the history of his February 1998 workplace injury and subsequent chronic dislocations. (CX. 6, pp. 8-9). Claimant reported occasional left shoulder pain, as well as some numbness, tingling and tenderness. (CX. 6, p. 12). The shoulder examination was basically normal, and Dr. Crotwell felt that Claimant had fully recovered from his surgery. (CX. 6, p. 13).

Dr. Crotwell was aware that Claimant had been involved in some other altercations and incidents after the initial accident, and he thought that Claimant probably did dislocate his shoulder again during the March 1998 altercation. (CX. 6, pp. 9-10). When asked about two other incidents that occurred in August 1998, an altercation and the four-wheeler wreck, Dr. Crotwell testified that either of those types of injuries could cause a fracture off the anterior inferior glenoid rim or a Hill-Sachs lesion. (CX. 6, pp. 10-11). Dr. Crotwell pointed out that a Hill-Sachs lesion, which is a compression of bone and cartilage, is usually the result of chronic dislocation. (CX. 6, pp. 11, 18-19). He affirmed that with a shoulder condition like Claimant's, each dislocation further aggravates or exacerbates the underlying condition. (CX. 6, p. 14). Dr. Crotwell agreed that Claimant's original injury set "this whole sequence into motion." (CX. 6, p. 15). Usually, if a person dislocates the shoulder one time, he or she has a good chance of healing without major surgery, but once the shoulder dislocates again, the likelihood of surgery increases. (CX. 6, pp. 16-18).

Dr. Crotwell testified that a Bankhart lesion occurs when the gristle around the glenoid is pulled away from the bone. (CX. 6, pp. 19-20). This condition may predispose a person to repeated dislocations. In Dr. Crotwell's opinion, Claimant's first dislocation began his shoulder problems. The recurring dislocations made his problem worse, eventually necessitating surgery. (CX. 6, p. 20). When asked to assume that the time period between Claimant's first and second dislocations was six months, and then another nine months passed before his next dislocation, Dr. Crotwell agreed that such a chronology would lead

him to believe that the last incident led to the recurring dislocations and subsequent need for surgery. (CX. 6, pp. 23-25, 26). Although a subsequent dislocation does not necessarily indicate that the shoulder was not fully healed from the initial incident, Dr. Crotwell admitted he had no way to be sure that the need for surgery was due to the last dislocation and not to the first one. (CX. 6, pp. 25-26).

Dr. Crotwell testified that he believed Claimant received the proper treatment after his initial dislocation but experienced some "insults and injuries" to the shoulder during this period which could have exacerbated his original condition. (CX. 6, pp. 26-27).

**Vocational Assessment Report/Labor Market Survey**

On February 15, 2000, Kelly Hutchins, a vocational rehabilitation counselor, met with Claimant to conduct a vocational interview. (ICSP 2, p. 2). At that time, Ms. Hutchins reviewed Claimant's medical history as well as his family/social background and his educational/vocational background. (ICSP 2, pp. 2-5). At that time, Claimant was four months post-surgery and was undergoing physical therapy twice a week. Dr. Black had not yet given Claimant any work restrictions. Claimant told Ms. Hutchins that when he obtained a job, Dr. Black would evaluate it to see whether Claimant could perform the duties. Claimant reported constant pain and stated that he could not fully extend his left arm overhead or out from his body. Claimant could not climb. He had no other difficulties with basic physical activities. (ICSP 2, p. 3). Claimant felt that he could return to welding work as long as he would not have to climb or do any overhead work. More specifically, Claimant felt capable of doing shop work, but he doubted that he would be able to work in the shipbuilding, tank or vessel industries because of his physical limitations. (ICSP p. 5).

In a January 26, 2001 labor market survey, Ms. Hutchins listed several light duty vocational options for Claimant. The dry cleaner helper job had a mid-range salary of $5.85 to $7.73 per hour. (ICSP p. 10). The security guard job had an entry-level wage rate of $6.00 per hour. (ICSP p. 11). The telephone surveyor job had a mid-range salary of $5.97 to $8.75 per hour. (ICSP p. 10). The fast food worker jobs had entry-level wage rates ranging from $5.25 to $6.00 per hour. (ICSP pp. 12-13). The clerk/cashier job had an entry-level wage rate ranging from minimum wage to $5.50 per hour. (ICSP p. 12). Finally, the light custodial worker job had a mid-range salary of $5.65 to $7.35 per hour. (ICSP p. 10).

Ms. Hutchins concluded that Claimant had the abilities and physical capabilities to earn between $5.15 and $6.00 per hour as of January 2001. In January 1998, these types of positions were available at a wage rate of $5.15 to $5.50 per hour. In July 2000, these types of positions were available at a wage rate of $5.15 to $5.75 per hour. Ms. Hutchins sent the detailed job descriptions to Dr. Black for his approval and noted that Claimant might be capable of performing other jobs as well. (ICSP p. 14).

# IV. DISCUSSION

In arriving at a decision in this matter, it is well-settled that the fact-finder is entitled to determine the credibility of the witnesses, weigh the evidence and draw his own inferences from it and is not bound to accept the opinion or theory of any particular medical examiner. Todd Shipyards v. Donovan, 200 F.2d 741 (5th Cir. 1962); Atlantic Marine, Inc. and Hartford Accident & Indem. Co. v. Bruce, 666 F.2d 898, 900 (5th Cir. 1981); Banks v. Chicago Grain Trimmers Ass'n, Inc., 390 U.S. 459, 467, reh'g denied, 391 U.S. 928 (1968). It has been consistently held that the Act must be construed liberally in favor of the claimants. Voris v. Eikel, 346 U.S. 328, 333 (1953); J.B. Vozzolo, Inc. v. Britton, 377 F.2d 144 (D.C. Cir. 1967).

However, the United States Supreme Court has determined that the "true-doubt" rule, which resolves factual doubt in favor of the claimant when evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. § 556(d), which specifies the proponent of a rule or position has the burden of proof. Director, OWCP v. Greenwich Collieries, 512 U.S. 267 (1994), aff'g 990 F.2d 730 (3d Cir. 1993).

I found Claimant to be a credible witness and have weighed his testimony accordingly.

**Responsible Carrier**

Under the LHWCA, rules for allocating liability among insurance carriers follow the rules allocating liability among employers. The carrier on the risk when the employer's liability attaches is responsible. Although the primary issue in a case may be that of determining the responsible employer, any issues related to insurance contracts are ancillary and can be addressed. Schaubert v. Omega Services Indus., 32 BRBS 233 (1998). By providing compensation insurance under the LHWCA, the insurer becomes bound for the full obligation which the insured employer incurs for any injury which occurs when the carrier is on the risk. Adam v. Nicholson Terminal & Dry Dock Co., 14 BRBS 735, 738 (1981); Crawford v. Equitable Shipyards, Inc., 11 BRBS 646, 649-50 (1979), aff'd per curiam sub nom. Employers Nat'l Ins. Co. v. Equitable Shipyards Co., 640 F.2d 383 (5th Cir. 1981); 33 U.S.C. § 935; 20 C.F.R. § 703.115.

The Parties agree that ICSP provided coverage to Employer from May 19, 1997, to May 19, 1998, that Reliance was on the risk from September 1998 to November 1999 and that Eagle Pacific was on the risk for the period between January 18, 1999, and March 2, 1999. (Tr. 7-9). At the hearing, Carrier ICSP stipulated that Claimant injured his shoulder in a workplace accident on February 24, 1998, which occurred within the course and scope

of his employment. (Tr. 9-10). The issue in this case is whether Claimant's disability was solely caused by this initial, work-related dislocation incident and its natural progression or is due to the combined effect of the first injury, its natural progression and later aggravation while the risk was covered by another carrier.

The medical evidence in this case indicates that all of Claimant's subsequent recurring dislocations were predicated upon the first dislocation in February 1998. Dr. Cope, who began treating Claimant shortly after the first dislocation, testified that Claimant's first injury "set this whole sequence into motion." According to Dr. Cope, each subsequent dislocation further injured Claimant's shoulder and worsened his condition, such that over time, it became progressively easier for Claimant's shoulder to dislocate. Likewise, Dr. Black testified that with dislocations, "the first event is the key," and each subsequent dislocation both aggravates the underlying condition and exacerbates the existing problem. Dr. Crotwell, who performed the IME on Claimant, testified, in accordance with the testimony of Dr. Cope and Dr. Black, that Claimant's first dislocation was the start of his shoulder problems. In sum, Claimant would not have suffered recurring dislocations, often resulting from seemingly minor, everyday events, had he not dislocated his shoulder at work in February 1998. While Dr. Black acknowledged the possibility that other incidents, such as Claimant's trip and fall over a toy, the altercations and the four-wheeler accident, could have caused similar dislocation injuries, there is no evidence that the other incidents would have resulted in dislocations even if Claimant had not previously injured his shoulder at work.

There is no dispute that Claimant suffered a work-related accident in which he dislocated his shoulder in February 1998. Claimant himself denied ever having shoulder problems before this accident occurred. In addition, three orthopedic surgeons have testified that when a patient has recurrent dislocations, the initial dislocation makes the shoulder more susceptible to subsequent chronic dislocations. In this case, the initial injury was the catalyst which led to Claimant's recurrent dislocations and eventual need for surgery to repair his shoulder. Accordingly, I find Claimant's disability was solely caused by this initial, work-related dislocation incident and its natural progression. I find that Claimant's resulting medical condition with respect to his shoulder is a compensable injury for which ICSP is the responsible carrier, as ICSP was on the risk at the time of the initial workplace accident in February 1998.

**Medical Expenses**

Section 7 of the LHWCA provides in pertinent part: "The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. § 907(a). In order to assess medical expenses against an employer, the expenses must be reasonable and necessary. Pernell v. Capital Hill Masonry, 11 BRBS

582 (1979). As previously stated, Claimant suffered a workplace injury which led to chronic dislocations and eventually surgery to repair his shoulder. Therefore, I hold ICSP must pay for all reasonable and necessary expenses related to Claimant's medical treatments resulting from his February 1998 shoulder injury, including all previous expenses incurred.

**Conclusion**

Based on the foregoing findings of fact, conclusions of law and the entire record, I hereby enter the following compensation order. All other issues not decided herein were rendered moot by the above findings.

## ORDER

**It is hereby ORDERED, ADJUDGED AND DECREED that:**

1. Carrier ICSP shall pay temporary total disability benefits to Claimant for the time periods from December 28, 1998 to January 18, 1999, from March 3, 1999 to March 15, 1999, from August 19, 1999 to September 9, 1999, and from December 8, 1999 to February 8, 2001, based on an average weekly wage of $600.

2. Carrier ICSP shall pay all reasonable and necessary medical expenses relating to the treatment of Claimant's February 1998 shoulder injury, including all previous expenses incurred.

3. Carrier ICSP shall pay Claimant interest on any accrued unpaid compensation benefits at the rate provided by 28 U.S.C. § 1961.

4. Within thirty days of receipt of this Order, counsel for Claimant should submit a fully-documented fee application, a copy of which shall be sent to all opposing counsel. Counsel for Carrier ICSP shall have twenty days to respond.

5. All computations of benefits and other calculations which may be provided for in this Order are subject to verification and adjustment by the District Director.

**ORDERED** this 15th day of May, 2003, at Metairie, Louisiana.

A

**LARRY W. PRICE**
**Administrative Law Judge**

**LWP:bab**